

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2010-0510-02E
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Food and Agriculture		AGENCY FILE NUMBER (If any) PH10044	

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Mediterranean Fruit Fly Eradication Area		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
TITLE(S) 3		AMEND 3591.5(a)	
		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Stephen S. Brown		TELEPHONE NUMBER (916) 654-1017	FAX NUMBER (Optional) (916) 654-1018
		E-MAIL ADDRESS (Optional) sbrown@cdfa.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 5/10/10
TYPED NAME AND TITLE OF SIGNATORY Nathan Dechoretz, Deputy Secretary for Administration and Finance	

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In Title 3 of the California Code of Regulations, amend Section 3591.5(a) to read:

3591.5. Mediterranean Fruit Fly Eradication Area.

(a) Proclamation of Eradication Area. That portion of the State of California described as follows, within which the Mediterranean fruit fly, *Ceratitis capitata*, is known to exist, is hereby proclaimed to be an eradication area with respect to said pest, and as such it is amenable to the provisions of Article 4 (commencing with Section 5761) of Chapter 8, Part 1, Division 4, of the Food and Agricultural Code of California.

The entire counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Clara, Solano, Tulare and Ventura.

Continued

Authority: Sections 407 and 5322, Food and Agricultural Code.

Reference: Sections 5761, 5762, 5763 and 5764, Food and Agricultural Code.

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing adoption of a regulation is necessary for an immediate action to avoid serious harm to the public peace, health, safety or general welfare, within the meaning of Government Code Section 11342.545 and Public Resources Code Section 21080. Government Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

The Department does not have a record of any person requesting a notice of regulatory actions under Government Code Section 11346.4(a)(1). Therefore, the provisions of Government Code Section 11346.1(a)(2) do not appear to be applicable to this emergency action as no one has requested such notice.

Specific Facts Showing the Need for Immediate Action

Mediterranean fruit fly is a destructive insect pest which attacks the fruit of various plants including over 260 crops such as citrus, tomatoes, grapes, avocados, peaches, and cherries.

The female punctures host fruit to lay eggs which develop into larvae. The punctures admit decay organisms that may cause tissue breakdown. Larval feeding causes breakdown of fruit tissue. Fruits with egg punctures and larval feeding are generally unfit for human consumption. Pupae may be found in fruit, but normally are found in soil.

A wild Mediterranean fruit fly was recently detected in the County of Imperial. On June 4, 2008, (Pest and Damage Record #1263640) an adult male Mediterranean fruit fly, sexually mature, was taken from a trap in the Calexico area of Imperial County. The detection of an adult

Mediterranean fruit fly is indicative of a possible incipient infestation of the fly in the Calexico area of Imperial County.

This amendment will provide authority for the State to perform specific detection, control and eradication activities against the Mediterranean fruit fly in Imperial County. This authority includes, "The searching for all stages of the fly by visual inspection, the use of traps, or any other means." It is immediately necessary to perform these activities within the Calexico area of Imperial County. To prevent spread of the fly to noninfested areas to protect California's agricultural industry and urban environment, if necessary, treatment activities against the fly would have to begin upon the detection of a second life stage of the fly within three miles and within one life cycle. The United States Department of Agriculture's Animal and Plant Health Inspection Service also accepts this standard as the trigger for an eradication response. The Food and Agriculture Organization of the United Nations has a similar international standard established. After the eradication trigger is met, treatments are to begin within 24-72 hours. However, "The searching for all stages of the fly by visual inspection, the use of traps, or any other means" must begin immediately to determine if there is an incipient infestation in Imperial County. Therefore, it is necessary to amend Section 3591.5(a) on an emergency basis.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if other states or countries enacted quarantines against California products.

The proposed amendment of this eradication regulation will proclaim Imperial County as an eradication area. The entire County of Imperial is proposed as an eradication area because it is the political division which provides the most workable eradication area boundary for exterminating an established Mediterranean fruit fly infestation. Fruit may have already been moved from the infested area to another portion of the county and adult flies may have already spread naturally from the infested area. These movements may have already resulted in small infestations outside the known infested area. To enable rapid treatment of these small

infestations without frequent amendment of the regulation, the entire county should be established as an eradication area.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if other states or countries enacted quarantines against California products.

The Mediterranean fruit fly has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. While the Department's compliance with the California Administrative Procedure Act and the California Environmental Quality Act (CEQA) are separate actions, they can be interrelated. Although adoption of specific regulatory authority can be the beginning of a project and therefore covered by CEQA, this regulation, for the reasons already set forth, constitutes a specific act necessary to prevent or mitigate an emergency as authorized by Public Resources Code section 21080, subdivision (b) (4) and Title 14, California Code of Regulations Section 15269, subdivision (c). The regulation is also an action required for the preservation of the environment and natural resources as authorized by Title 14, California Code of Regulations, Sections 15307 and 15308.

This regulation will provide authority for the State to perform control and eradication activities against Mediterranean fruit fly in Imperial County. To prevent spread of the fly to noninfested areas to protect California's agricultural industry, it is necessary to immediately begin treatment activities against the Mediterranean fruit fly. Therefore, it is necessary to amend this regulation as an emergency action.

The Department also relied upon the following document:

"Mediterranean Fruit Fly Action Plan," United States Department of Agriculture, Marketing and Regulatory Programs, Animal and Plant Health Inspection Service, Plant Protection and Quarantine.

Authority and Reference Citations

Authority: Sections 407 and 5322, Food and Agricultural Code.

Reference: Sections 5761, 5762, 5763 and 5764, Food and Agricultural Code.

Informative Digest

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law provides that the Secretary may establish, maintain, and enforce eradication regulations as he deems necessary to circumscribe and exterminate or prevent the spread of pests. The eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, and the means and methods which may be used in the eradication of said pest.

Existing law also obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests, and that the Secretary may establish, maintain, and enforce eradication regulations as he deems necessary to circumscribe and exterminate or prevent the spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322). The eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, and the means and methods which may be used in the eradication of said pest (Food and Agricultural Code, Section 5761).

Section 3591.5(a), Mediterranean Fruit Fly Eradication Area.

This amendment of Section 3591.5(a) will establish Imperial County as an eradication area for the pest *Ceratitidis capitata*, (Mediterranean fruit fly). The effect of this amendment will be to provide authority for the State to perform control and eradication activities against Mediterranean fruit fly in Imperial County to prevent spread of the fly to noninfested areas to protect California's agricultural industry.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that this regulation does not impose a mandate on local agencies or school districts.

Cost Estimate

The Department also has determined that the regulation will involve no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, and no costs or savings in federal funding to the State.